IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5159 of 1997

with

SPECIAL CIVIL APPLICATION No 7753 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ASHOKBHAI JETHABHAI JADAV

Versus

CHIEF OFFICER

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Appearance:

1. Special Civil Application No. 5159, 7753 of 1997

MR YN RAVANI for Petitioner No. 1-12

MR YV SHAH for Respondent No. 1

MR RD RAVAL for Respondent No. 2

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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 18/10/2004

COMMON ORAL JUDGEMENT

Heard learned advocate Mr.Yogesh Ravani and Ms.P.C.Fernandis on behalf of the petitioners and learned advocates Mr.Y.V.Shah and Mr.R.D.Rawal for respondents in respective petition. Ms.Rina Patel, Chief Officer of the Petlad Nagarpalika is also personally present before this Court.

2. In both these petitions, the petitioner has challenged the termination order passed by the Chief Officer, Petlad Nagarpalika. Learned advocate Mr.Ravani has submitted that termination order is contrary to the provisions of Section 25-F & G of the Industrial Disputes Act, 1947. He also submitted that no reasonable opportunity was given to the petitioners before terminating their services and as such, no justification has been given by the respondent for terminating services of the petitioner. He also submitted that mere offer to collect legal dues, is not enough compliance of Section 25-F & G of the I.D.Act. The order of termination is bad and contrary to the principles of natural justice also violative of mandatory provisions of Section 25-F and G of the I.D.Act. He also submitted that the order of termination is hit by Article 14 of the Constitution of India. He also submitted that when services of the petitioners terminated, at that time, juniors to the petitioners remained in service. It is also submitted that once the settlement is recorded by the Tribunal, then the Tribunal has no jurisdiction to set aside the said settlement in absence of the petitioner. He also submitted that the Tribunal has set aside the settlement in absence of the petitioners, that too, without giving an opportunity to the petitioners. The petitioners were not party to the proceedings inspite of the fact that the petitioners were beneficiary of the said settlement. He also submitted that the tribunal has no power under the provisions of the Industrial Disputes Act, 1947 and Industrial Dispute [Gujarat] Rules, 1966 to review own order. Therefore, according to him, termination order is bad and base of the termination order is also bad.

3. In both these petitions, the challenge involved is identical. At the time of issuing Rule, this Court passed the following orders in both these petitions on 16th July, 1997 in SCA NO.5159 of 1997 and dated 21st October, 1997 in SCA No.7753 of 1997, since relevant, referred to as under :

"Order in SCA No.5159 of 1997 dtd.16.7.97"

Mr.Yogesh Ravani for petitioners. Mr.Y.V.Shah enters appearance on behalf of Petlad Nagar Palika, Petlad, District Kheda.

Rule, returnable by 1.8.1997. In the mean while the operation of the retrenchment orders in respect of the twelve petitioners herein as per orders dated 10.7.97 passed by the Chief Officer of Petlad Nagar Palika shall remain stayed and these petitioners shall be allowed to continue in service as they were continuing prior to the date of the passing of the impugned order dated 10.7.1997. Direct Service is permitted."

"Order in SCA No.7753 of 1997 dtd.20.10.97"

Heard Mr.Fernandez for the petitioner. This matter appears to be similar to another petition being SCA No.5159 / 97 wherein similarly situated workmen have been protected. In the circumstances, issue notice to the respondents returnable on 17th November, 1997. In the meanwhile and until further orders there will be ad interim relief in terms of Para-14[C]. To be placed along with SCA No.5159 of 1997 on the returnable date."

4. Thus, this Court has stayed operative portion of the termination order. Mr.Ravani for the petitioners therefore submits that consequent to orders of this Court, all the petitioners of both these petitions have remained in service till date and they are continued in service. This fact is not disputed by the learned advocate Mr.Y.V.Shah for the respondents Petlad Nagarpalika. Therefore, in this back ground, now the matter is required to be examined on the issue whether the termination is legal and valid or not.

5. It is necessary to note one important aspect of the matter that no reply is filed by the respondent Nagarpalika. However, learned advocate Mr.Shah has raised certain contentions that Section 25-F of the I.D.Act has been complied with on the ground that offer was made to the workmen to collect their legal dues from the office. No opportunity was given to the petitioners prior to termination, is undisputed fact remained uncontroverted by the learned advocate Mr.Shah. Therefore, considering the fact that all the petitioners were appointed by the respondent Nagarpalika by order

dated 7th August, 1995 as permanent employee of the Nagarpalika and remained in service upto the date of termination for a period more than two years continuously and each of the petitioner has attended 240 days continuous service without any break. This facts are not disputed between the parties that each petitioner remained in service with the respondent Nagarpalika for more than 240 days continuous service. At the time of terminating service of the petitioners, juniors tot he petitioners remained in service with the respondent Nagarpalika. This fact is also not in dispute between the parties. Therefore, according to my opinion, the petitioners are entitled to benefit of Section 25-F and G of the I.D.Act, 1947. The petitioners have produced order of appointment issued by the Petlad Nagarpalika and the order of termination issued by the Chief Officer, Petlad Nagarpalika. All the petitioners were appointed in August, 1995 in the scale on different posts of Peons, Octroi Clerk, Tractor Driver etc.

6. I have considered termination order issued by the Chief Officer, Petlad Nagarpalika. The termination order has been issued because of the order passed by the Industrial Tribunal on 26th June, 1997 in review application No.4 / 1995 in IT / 1 / 1991. But no details of the order given to the petitioner by the respondent Nagarpalika and as such, no copy of the orders in question relied upon by Petlad Nagarpalika, have been supplied to the petitioner. No detailed reasons are communicated to the petitioner and without giving any reasonable opportunity to the concerned petitioner, straightaway, in arbitrary manner the termination order has been passed by the respondent Nagarpalika. There is no doubt that Industrial Disputes Act is applicable to the respondent Nagarpalika and each workman had attended 240 days continues service and remained in service for a period of two years without any break as per the undisputed fact and even at the time of terminating their services, Section 25-F and Section 25-G are not complied with. It is not case of the respondent Nagarpalika that at the time of terminating services of the petitioners, Section - 25-F and G has been complied with by the Nagarpalika. Mere offer is not enough to comply with the provisions of Section 25-F and G of the I.D.Act. Even in that offer against the termination order, it is not clear whether retrenchment compensation and notice pay has been offered to the petitioners or not. Therefore, in absence of such compliance, according to my opinion, the order of termination is bad and violative of mandatory provisions of Section 25-F & G of the I.D.Act and the same is also contrary to the principles of natural justice.

Therefore, the order of termination is required to be quashed and set aside. Looking to the records of the petition, the order of termination has been passed by the respondent Nagarpalika against the petitioners in pursuance of the order made by the Industrial Tribunal in Review Application No.IT/4/95 dated 26th June, 1997 wherein, the Tribunal has set aside the settlement recorded in review application No.1/1991 and order passed in Reference IT No.958 / 83 as well as review application NO.4 / 1990 are made confirmed by the Tribunal. The tribunal has entertained review application inspite of the fact that there is no provision in the Industrial Disputes Act, 1947 and Industrial Disputes [Gujarat] Rules, 1966. On the contrary, the tribunal has examined the review application on merits as if it having original jurisdiction in the matter. Therefoer, the Tribunal has, prima facie, passed the order dated 26th June, 1997 without jurisdiction. Normally, the powers of review inhere from statutory provisions. In absence of the statutory provision, Industrial Tribunal has not power to review its own order. The petitioners were not party to the review proceedings and order dated 26th June, 1997 has passed in absence of the petitioners. Therefore, naturally the order of Tribunal dated 26th June, 1997 is not binding to the petitioners. But the respondent Nagarpalika has acted on the order dated 26th June, 1997 passed by the Tribunal and terminated services of the petitioners. Therefore, the respondent Nagarpalika has passed order in arbitrary and illegal manner amounting to adopting unfair labour practice. Thus, it is clear case of legal victimisation by the respondent Nagarpalika. It was rivalry between the Unions and respondent Nagarpalika which resulted into termination of the petitioners who are not party to such rivalry of the Unions. The petitioners are beneficiary of the settlement and in pursuance of the settlement they were engaged / appointed by the respondent Nagarpalika. Therefore, before passing any adverse order against the petitioners or any order which ultimately adversely affect the petitioners, in that case, the Tribunal ought to have given reasonable opportunity of hearing to the petitioners. But no such opportunity was given by the Tribunal while passing the order dated 26th June, 1997. Therefore also, the order of termination is bad in law. It is settled position of the law that non compliance of mandatory provisions of Section 25-F of the I.D.Act, is suffice and enough to declare the order of retrenchment is ab initio void. Such termination is covered by definition of Section 2[oo] of the I.D.Act, 1947 as retrenchment. If such retrenchment is illegal and contrary to the provisions of Section 25-F of the I.D.Act, it renders the same ab

initio void as held by the Apex Court in case of MOHANLAL V. BHARAT ELECTRONICS, AIR 1981 SC 1253. The law on this point has been settled by the Apex Court even in recent pronouncement in case of KRISHNA BAHADUR V. M/S PURNA THEATRE, 2004 [103] FLR 146. The Apex Court has observed that it is settled position of law that non compliance of Section 25-F & G of the Act, the order of termination is ab initio void. In para-10 of the aforesaid decision, the Apex Court observed as under :

"10. It is neither in doubt nor in dispute that the provision of Section 25-F[b] is imperative in character. The provisions postulates the fulfillment of the following three conditions :

[i] One month's notice in writing indicating the reasons for retrenchment or wages in lieu of such notice;

[ii] Payment of compensation equivalent to fifteen days, average pay for every completed year of continuous service or any part thereof in excess of six months; and

[iii] Notice to the appropriate Government in the prescribed manner.

The requirement to comply with the provision of Section 25-F[b] has been held to be mandatory before retrenchment of a workman is given effect to. In the event of any contravention of the said mandatory requirement, the retrenchment would be rendered void ab initio.

In Workmen of Sudder Workshop of Jorehaut Tea Co. Ltd. The Management, whereupon reliance had been placed by the Division Bench, this Court held:

"That apart, if there be non compliance with section 25-F, the law is plaint that the retrenchment is bad... " "

7. Therefore, considering non compliance of Section 25-F & G of the Act, as well as non compliance of principles of natural justice and keeping in mind the fact that by interim order, all these petitioners are in service for more than seven years and now they are likely to complete ten years service as a whole. Therefore also, considering this fact, according to my opinion, the

order of termination requires to be quashed and set aside.

8. Even so, no reply has been filed on behalf of the respondent Nagarpalika and therefore, in such circumstances, averments made in the petition remain unchallenged and uncontroverted and the same are required to be accepted by the Court.

9. In the result, both these petitions are allowed. The order of termination in respect of each of the petitioner of both these petitions are hereby quashed and set aside. Consequently, it is declared that each of the petitioner are deemed to be in service for all the purposes with the respondent Nagarpalika.

Rule, in both these petition, is made absolute with no order as to costs.

Date : 18.10.2004 [ H.K.Rathod, J.]

#kailash, ps#